



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ASIM KHAN FOR BROWNS IN AND OUT MARKET VPDES Permit No. VAG40**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Mr. Asim Khan, regarding the Browns In and Out Market facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Facility" or "Site" means the Browns In and Out Market (Browns) convenience store and gas station located at 2724 Irish Road in Esmont, Virginia, from which discharges of domestic sewage occur.
8. "Mr. Khan" means Mr. Asim Khan, currently a resident of Esmont, Virginia. Mr. Khan is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPDES General Permit No. VAG40, which was issued under the State Water Control Law and the Regulation on August 2, 2011 and which expires on August 1, 2016.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
13. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge

or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

14. "Regulation" means "The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Domestic Sewage of Less Than or Equal to 1,000 Gallons Per Day," 9 VAC 25-110-10, *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "VPDES" means Virginia Pollutant Discharge Elimination System.
20. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mr. Khan is subject to the Permit which allows him to discharge treated domestic sewage from the Facility to an unnamed tributary of Ballinger Creek, in strict compliance with the terms and conditions of the Permit.
2. Ballinger Creek is located in the James River Basin (Middle James River Subbasin). Ballinger Creek is listed in DEQ's 305(b)/303(d) report as impaired for E. coli.
3. On September 14, 2015, DEQ-Valley Regional Office staff conducted an inspection of Browns. The following describes the inspector's factual observations and identifies the applicable legal requirements:
  - a. The wastewater treatment system aeration blower was not operating.

The Permit Part II.Q requires that "[T]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit."

The Permit Part II.U.3.a states that “[B]ypass is prohibited, and the board may take enforcement action against a permittee for bypass...”

- b. Disinfection was not occurring and the UV disinfection system had been removed.

The Permit Part I.A.1 requires that “[W]hen the facility is discharging, continuous disinfection shall be provided in order to maintain this (E. coli) effluent limit.”

- c. Pump and haul of sewage was not initiated within 48 hours after notification of need for repairs. DEQ requested that Mr. Khan begin pump and haul of sewage during the inspection. In a phone conversation with DEQ staff on September 28, 2015, Mr. Khan indicated that he had not initiated the pump and haul of sewage.

The Permit Part I.B.2.b(3)(b) requires that “...Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated from the facility or dwelling if full and complete repairs cannot be accomplished within 48 hours.”

- 4. Based on the results of the September 14, 2015 inspection and the September 28, 2015 phone conversation, the Board concludes that Mr. Khan has violated the Permit Parts II.Q, II.U.3, I.A.1 and I.B.2.b(3)(b).
- 5. On October 5, 2015, DEQ issued Notice of Violation No. W2015-10-V-0001 to Mr. Khan for the violations noted in paragraph C(4).
- 6. The Department has issued coverage under no permits or certificates to Mr. Khan other than under VPDES Permit No. VAG40.
- 7. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
- 8. The Regulation, at 9 VAC 25-110-80, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
- 9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute,
- 10. The unnamed tributary of Ballinger Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law,

11. On January 5, 2016, the Facility's consultant, Inboden Environmental Services, reported that the UV disinfection system and the Fuji aeration blower had been replaced on October 29, 2015.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Mr. Khan, and Mr. Khan agrees to:

1. Pay a civil charge of **\$5,425.00** in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
September 1, 2016	\$1,356.25 or balance
December 1, 2016	\$1,356.25 or balance
March 1, 2017	\$1,356.25 or balance
June 1, 2017	\$1,356.25

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by Mr. Khan. Within 15 days of receipt of such letter, Mr. Khan shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.
3. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104Richmond, Virginia 23218

4. Mr. Khan shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Mr. Khan shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Mr. Khan for good cause shown by Mr. Khan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.



2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No W2015-10-V-0001 dated October 5, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Mr. Khan admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Mr. Khan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mr. Khan declares he has received fair and due process under the Administrative Process Act and the State Water Control Law and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Mr. Khan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mr. Khan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond his control and not due to a lack of good faith or diligence on his part. Mr. Khan shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Khan shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

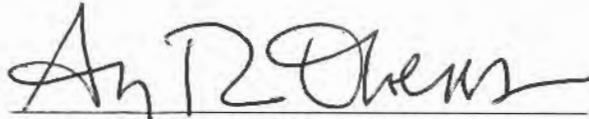
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Mr. Khan.
- 11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after Mr. Khan has completed all of the requirements of the Order;
  - b. Mr. Khan petitions the Director or his designee to terminate the Order after he has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Mr. Khan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Khan from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable


- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Mr. Khan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. Any documents to be submitted pursuant to this Order shall also be submitted by Mr. Khan or an authorized representative of Mr. Khan.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By his signature below, Mr. Khan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28<sup>th</sup> day of July, 2016.



Amy T. Owens, Regional Director  
Department of Environmental Quality

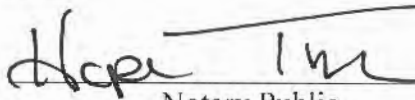
Mr. Asim Khan voluntarily agrees to the issuance of this Order.

Date: 08-24-16 By:  \_\_\_\_\_, Owner  
Asim Khan (Title)  
Browns In and Out Market

Commonwealth of Virginia

City/County of Charlottesville

The foregoing document was signed and acknowledged before me this 24<sup>th</sup> day of May, 2016, by Mr. Asim Khan.

  
\_\_\_\_\_  
Notary Public

7319443

Registration No.

My commission expires: June 30, 2018

Notary seal:

